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EXAMINER

WALTERS, JOHN DANIEL

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/995,097
Filing Date: November 27, 2001
Appellant(s): BROMER, NICK (NICHOLAS SHEPPARD)

Nick Bromer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 July 2007 appealing from the Office action mailed 21 April 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No. 2005-0040, Heard: 18 May 2005

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5232231	Carlsmith	8-1993
5183275	Hoskin	2-1993
5569629	TenEyck et al.	10-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 5, 28, 29, 35 – 38 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlsmith (5,232,231). Carlsmith discloses a brake for roller skates comprising:

- a skate (Figs. 3 – 11);
- a brake (Figs. 3 and 4, items 24, 35, 32, 30, and 41);
- a lifter (Fig. 5, toe portion of item 62);
- said lifter being located above a toe forward of a metatarsal of a user (Fig. 4);
- a brake shoe (Fig. 4, item 30) coupled to said lifter via a linkage (Fig. 4, item 35);
- said brake shoe bearing on at least one wheel (Fig. 4);
- said lifter being coupled to said brake (Fig. 4);
- said lifter pressable upward by a toe motion consisting of an upward rotation of at least one phalanx bone relative to at least one metatarsal bone (Fig. 4);
- said lifter is pivoted about an axis, adjacent to a joint between a metatarsal bone and a phalanx bone, to be moved upward by said toe (Fig. 4);
- said brake actuated by a natural motion of the toe (Fig. 4);
- said brake including a return spring (Fig. 4, item 22).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlsmith (5,232,231) in view of TenEyck et al. (5,569,629). Carlsmith discloses a brake for roller skates as described above. Carlsmith does not disclose the composition of his brake shoe. TenEyck, however, discloses high temperature stable continuous filament glass ceramic fibers comprising:

- fiber-reinforced urethane elastomers for the manufacture of brake pads (column 3, lines 46 – 52 and column 7 line 52 to column 8 line 5).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use a fiber-reinforced urethane elastomeric material of TenEyck in the brake shoe of Carlsmith in order to provide a material that will perform well at the high temperatures caused by the combination of braking and skating on hot surfaces.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carlsmith (5,232,231) in view of Hoskin (5,183,275). Carlsmith discloses a brake for roller skates as described above. Carlsmith does not disclose a brake which pivots about an axle which acts upon a wheel not mounted upon said axle. Hoskin, however, discloses brake for in-line roller skates comprising:

- a brake shoe pivoted to rotate about an axle of a first wheel (Fig. 3, items 72r, 106a and 82r);
- said brake bearing against a second wheel (23w).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the multi wheel brake of Hoskin in the brake system of Carlsmith in order to minimize brake wear while providing adequate force for breaking.

(10) Response to Argument

In regards to claim 5, Applicant states, "...a toe motion consisting of an upward toe rotation would not activate Carlsmith's brake...raising the toes relative to the metatarsals-while doing nothing else—would not result in braking."

Applicant's language does not require that the only motion that a foot undergoes be an upward rotation of the toes. Applicant includes a limitation of "a toe motion consisting of an upward rotation" but is silent upon any other motions by any other parts of a foot. The only toe motion preformed in use of the apparatus of Carlsmith is that they rotate upwards while the heel is rotated downwards. Applicant does not provide limitations relating to the movement of a user's heel.

In regards to claim 5, Applicant also states, "...the Examiner asserts that the axis of Carlsmith is adjacent to the metatarsal/phalanx joint."

Applicant's point is unclear as there is no limitation within claim 5 regarding an axis.

In regards to claim 5, Applicant also states, "...the examiner asserts that Carlsmith discloses brake actuation by a 'natural' motion of the toe... The Appellant claims raising the toes relative to the metatarsals 'while the user's foot is on the position' which implies that the heel, as well as the rest of the foot, is flat down; that is contrary to Carlsmith's teaching."

As discussed above, there is no limitation restricting a movement of other foot parts in addition the claimed toe movement. Therefore, even under the restrictive definition of Carlsmith, i.e. raising ones toes into the air while keeping one's heel on the ground is an unnatural motion for the foot, the apparatus of Carlsmith is a natural foot motion. Additionally, Applicant's language requires a natural motion of the toe, not of the foot. Therefore attempting to apply Carlsmith's definition of natural foot motion to Applicant's claims is not appropriate.

In regards to claim 5, Applicant also states, "The Examiner asserts that Carlsmith discloses a lifter... To arbitrarily isolate one portion of the boot and call it a 'lifter'... is not supported by the reference."

The portion of the boot called out is commonly referred to as the toe box. It is commonly known as a separate area of a piece of footwear. Should one lift one's toes in any piece of footwear, they will come in contact and exert pressure upon the top of the toe box. As such, it is reasonable to consider a toe box to be a 'lifter', especially in regards to the motion of Carlsmith.

In regards to claim 36, Applicant states, "...No lifter positioned forward of the metatarsals is disclosed by Carlsmith. In regards to claims 37 and 38, Applicant follows a similar line of reasoning.

As discussed above, the toe box of Carlsmith can reasonably be considered a lifter and is clearly forward of the metatarsals.

In regards to claims 31 – 34, Applicant states, "...the Examiner's proposed motivation to avoid heat...is not supported in the reference because the brake parts do not touch the ground...the assertion of high temperatures is respectfully submitted to be unsubstantiated...the Appellant has never seen a skate brake smoking."

Applicant's arguments against the motivation to combine are simply wrong. It does not take visible smoke emanating from a brake pad to indicate a reduced wear life from increased heat. A common time of year for skates to be used is summer and common places for skates to be used are roads, sidewalks and parking lots. During the summer it is very easy for the sun to impart significant heat into a black-top surface, said heat then rising via convection and increasing the temperature to any item above it. Therefore, it is very likely that, during a skates intended use, said brake components could experience a significant enough temperature increase to reduce the wear life of said brakes.

In regards to claim 39, Applicant states, "Hoskin discloses a brake shoe...that is pivoted to rotate about an axle of a first wheel...brake shoe of Hoskin does not bear

again any wheel...roller 82r...it is a roller and not a wheel...neither is it a brake shoe, because it is in 'non-slipping, rolling contact'..."

A cylindrical rolling object can reasonably be considered a wheel. As such, item 82r qualifies as a wheel. In regards to applicant claims about said roller not being a brake, Hoskin clearly shows in figures 6 and 7 that item 72r (the outer periphery of item 82r) contacts item 23w (the first wheel) and then contacts item 68p which halts the rotation of item 82r. As item 72r is in direct contact with item 23w and item 68p, the lack of rotation of 72r will cause item 23w to slow, or brake.

In regards to claim 39, Applicant also states, "...different complicated mechanisms...no expectation for success...not even clear how these mechanisms should be combined...does not teach minimizing break wear."

A heel break, similar to that of Hoskin could be combined with the skate of Carlsmith in order to place a secondary break mechanism, i.e. minimize the wear on a primary system by employing a secondary mechanism. The heel break of Hoskin is actuated by the heel of the skate rocking backwards. This is the same mechanism employed by Carlsmith. One of ordinary skill in the art could easily make use of that single motion to actuate both systems.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

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For the above reasons, it is believed that the rejections should be sustained.

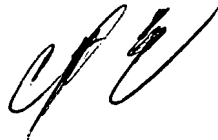
Respectfully submitted,

John Walters

A handwritten signature in black ink, appearing to be 'JW' inside an oval shape.

Conferees:

Chris Ellis

A handwritten signature in black ink, appearing to be 'CE' with a stylized flourish.

Joe Morano

A handwritten signature in black ink, appearing to be 'JM' with a long horizontal flourish.